

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MICHAEL E. ELLER, )  
Petitioner, ) CIVIL ACTION NO.  
 ) 05-10740-DPW  
v. )  
 )  
 )  
LUIS SPENCER, SUPERINTENDENT, )  
Respondent. )

MEMORANDUM AND ORDER  
June 1, 2005

The petitioner is this state habeas corpus proceeding under 28 U.S.C. § 2254 claims that his appeal in the state court has been delayed by the failure to prepare transcripts of his suppression hearing and trial in an expeditious manner. After the filing of the petition in this court, the state Superior Court entered a Notice of the Assembly of the Record, including the transcripts, for his state appeals. His appeal has now been docketed in the Massachusetts Appeals Court.

Under the circumstances, I find no reason to relieve the petitioner of his statutory obligation to exhaust the merits of his claims--including any claim he may have from the delay in the processing of his appeal--before proceeding in this court. See generally 28 U.S.C. § 2254 (b) & (c). The law in this Circuit is long standing and well settled that federal courts should avoid taking up claims until they have been pursued fully through the state courts. See, e.g., Adelson v. DiPaola, 131 F.3rd 259, 261-62 (1st Cir. 1997); Mele v. Fitchburg District Court, 850

F.2d 817, 819 (1st Cir. 1988); Dougan v. Ponte, 727 F.2d 199, 202 (1st Cir. 1984). In as much as the petitioner's appeal is now lodged with the Appeals Court, there is no reason to believe that the ordinary course of Massachusetts appellate process will unduly delay the final resolution of his claims by the state courts.

The Respondent's Motion to Dismiss this petition is accordingly GRANTED.

/s/ Douglas P. Woodlock

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DOUGLAS P. WOODLOCK  
UNITED STATES DISTRICT JUDGE